

## Office of the Secretary of Defense

## § 235.5

and when so issued and posted such directive shall have the same force and effect as if made a part hereof.

### § 234.19 Penalties and effect on other laws.

(a) Whoever shall be found guilty of willfully violating any rule or regulation enumerated in this part is subject to the penalties imposed by Federal law for the commission of a Class B misdemeanor offense.

(b) Whoever violates any rule or regulation enumerated in this part is liable to the United States for a civil penalty of not more than \$1,000.

(c) Nothing in this part shall be construed to abrogate any other Federal laws.

## PART 235—SALE OR RENTAL OF SEXUALLY EXPLICIT MATERIAL ON DoD PROPERTY

Sec.

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AUTHORITY: 10 U.S.C. 2489a.

SOURCE: 64 FR 6218, Feb. 9, 1999, unless otherwise noted.

### § 235.1 Purpose.

This part implements 10 U.S.C. 2489a, consistent with DoD Directive 1330.9<sup>1</sup> by providing guidance about restrictions on the sale or rental of sexually explicit materials on property under the jurisdiction of the Department of Defense or by members of the Armed Forces or DoD civilian officers or employees, acting in their official capacities.

### § 235.2 Applicability and scope.

This part: (a) Applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as a Service in the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of

the Department of Defense, the Defense Agencies, and the DoD Field Activities.

(b) Shall not confer rights on any person.

### § 235.3 Definitions.

*Dominant theme.* A theme of any material that is superior in power, influence, and importance to all other themes in the material combined.

*Lascivious.* Lewd and intended or designed to elicit a sexual response.

*Material.* An audio recording, a film or video recording, or a periodical with visual depictions, produced in any medium.

*Property under the jurisdiction of the Department of Defense.* Commissaries operated by the Defense Commissary Agency and facilities operated by the Army and Air Force Exchange Service, the Navy Exchange Service Command, the Marine Corps Exchanges, and U.S. Navy ships' stores (sometimes referred to collectively herein as "retail outlets"), excluding, for the purposes of this part, entities that are not instrumentalities of the United States.

*Sexually explicit material.* Material, the dominant theme of which is the depiction or description of nudity, including sexual or excretory activities or organs, in a lascivious way.

### § 235.4 Policy.

In implementing 10 U.S.C. 2489a, it is DoD policy that: (a) No sexually explicit material may be offered for sale or rental on property under the jurisdiction of the Department of Defense, and no member of the Armed Forces, or DoD civilian officer or employee, acting in his or her official capacity, shall offer for sale or rental any sexually explicit material.

(b) Material shall not be deemed sexually explicit because of any message or point of view expressed therein.

### § 235.5 Responsibilities.

(a) The Assistant Secretary of Defense for Force Management Policy, under the Under Secretary of Defense for Personnel and Readiness, shall:

(1) Monitor and, as to DoD resale activities under the Assistant Secretary's authority, direction and control, ensure compliance with this part;

<sup>1</sup>Copies are available at <http://web7.osd.mil/corres.htm>.